(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JUN 1 2 2015

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification for the beneficiary under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an advanced degree professional. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and a copy of the prior submissions. For the reasons discussed below, upon review of the entire record, we agree with the director's findings.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in the instant petition is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the beneficiary's proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit.

Further, assertions regarding the overall importance of a beneficiary's area of expertise are relevant, but cannot by themselves suffice to establish eligibility for a national interest waiver without a review of the beneficiary's own qualifications. *Id.* at 220. Moreover, being "unique" does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

II. ANALYSIS

The petitioner filed the Form I-140 petition on July 25, 2013. As evidence the petitioner submitted various documents, including copies of the following:

1. the beneficiary's academic credentials;
2. employment verification letters;
3. the beneficiary's professional memberships;
4. blog posts by the beneficiary;
5. published material that quotes the beneficiary;
6. reference letters; and
7. information about the petitioner and other organizations for which the beneficiary has provided services.

The preceding includes types of evidence that can contribute toward a finding of exceptional ability, the focus of the petitioner's initial filing. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F). Exceptional ability, however, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise.

The petitioner has established that the beneficiary's job as the Director of Communications for the petitioner is in an area of intrinsic merit and that the proposed benefits, education of the American public and U.S. policy makers about pressing global affairs,[1] would be national in scope. It remains, then, to determine whether the proposed benefits of the beneficiary's work will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. At issue is whether the beneficiary's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

On November 12, 2013, the director issued a request for evidence (RFE). The director found that "[t]he petitioner did not submit evidence of past contributions that would warrant the expectation of a national prospective benefit to a degree that would overcome the national benefit of the labor certification" and requested "evidence to establish that the beneficiary's past record justifies projections of future benefit to the nation." (Emphasis in original.) In response, the petitioner submitted two additional letters and a printout from the petitioner's website regarding their history. The director denied the petition on September 29, 2014 concluding, in part, that the petitioner had

[1] The petitioner discusses these proposed benefits in response to the director's November 12, 2013 notice.

not established the beneficiary's "influence on the field as a whole" or "the significance and impact of her work."

The petitioner submitted two reference letters with the initial petition from the beneficiary's former colleagues at According to Director of Network Program Development for the beneficiary "was responsible for driving the editorial content of the entire, daily, ninety minute long show" in her role as senior producer and was also "an editorial leader on the show." In addition, she states that "our audience was kept better informed than consumers of any other media about everything from the Sudan, to the DRC, to South Africa and beyond." According to Senior Host for Network Current Affairs, the beneficiary "provided unique insight into a number of key international jurisdictions" and "was the African expert for ""

Senior Producer for who worked with the beneficiary "at both and the in London" provides information regarding the beneficiary's employment history and additional details regarding her duties and previous positions.

While all of the beneficiary's colleagues speak very highly of her and demonstrate her value to her employers, the letters do not establish her influence on the field.

In response to the director's RFE, the petitioner submitted two letters which discuss the Director of Communications position, but not the beneficiary. Vice-President of Communications for provides an overview of "the important and significant role that a Director of Communications at an such as [the petitioner] plays in our national dialog." President of the petitioning organization, elaborates on the duties of the beneficiary's position and its importance to the organization. Similar to the above, the letters establish the importance of the position to the petitioning employer, but they do not demonstrate that the beneficiary has made a demonstrable impact on her field.

As previously discussed, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is a separate benefit from the classification sought, and therefore eligibility for the underlying classification does not necessarily demonstrate eligibility for the benefit of the waiver.

Based upon the submitted information, the petitioner has been a successful producer with a focus on Africa for a number of respected organizations. She is a member of the and the Membership in however, requires only that the individual is "experienced in international affairs " The is "[a] professional forum" which "is comprised of communications

professionals [redacted] While the organizations may have had an impressive list of past speakers and/or members, the beneficiary's membership in these organizations does not demonstrate an impact on the field.

The petitioner submitted copies of the beneficiary's blog posts on [redacted] and one guest blog post on the [redacted] website. The blog posts on the [redacted] were reports on her assignments abroad with the petitioner. Although the petitioner submitted information regarding the publication [redacted] the petitioner did not submit any evidence regarding the [redacted] or the requirements to appear in their morning news alert to establish their impact. The petitioner did not submit any information regarding [redacted]

Regarding the article in [redacted] the subject of the article was [redacted] The beneficiary, a producer for the show at the time, provided a brief description of the two stories, one on [redacted] and the other on [redacted] The article does not establish the impact of the beneficiary beyond her employer.

The petitioner also submitted evidence that the beneficiary has been invited to speak by [redacted] and the [redacted] According to the submitted information, the beneficiary "volunteer[ed] to be a mentor at the [redacted] and the [redacted] event was [redacted] The petitioner has not demonstrated the beneficiary's impact beyond the student she mentored or the individuals attending the [redacted]

The petitioner, referencing [redacted] reference letter, asserts that the beneficiary, while a producer for [redacted] "conducted the first ever [redacted] however, only states that the beneficiary produced the interview. Further, [redacted] unlike [redacted] and [redacted] did not work with the beneficiary at [redacted] and neither of the beneficiary's colleagues address the issue. While the beneficiary has developed contacts that allowed her to excel as a producer, the petitioner has not established that the beneficiary's work on such an interview, or with other political dignitaries, has impacted the field of news production or public relations/communications.

The submitted documentation demonstrates that the beneficiary is an experienced producer who has worked for a number of respected organizations and developed many significant contacts internationally. These qualities clearly make the beneficiary an asset to the petitioner. The issue of whether willing, qualified workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. Section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A); *NYSDOT*, 22 I&N Dec. at 221. At issue is whether this beneficiary's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate

and distinct from the visa classification she seeks. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

None of the submitted documents establish that the beneficiary's specific work as a producer, and more recently as the Director of Communications, has affected the field as a whole. The petitioner has not established the beneficiary's past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that the beneficiary's influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

On appeal, the petitioner relies on a non-precedent AAO decision to assert that the beneficiary may establish "the significance and impact of her work on [a] national and international level rather than just a general field." While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, non-precedent decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes. 8 C.F.R. § 103.10(e). Regardless, the cited decision found that "the scientific community recognizes the significance of th[e] petitioner's research rather than simply the general area of research" and that "the petitioner has established a substantial level of influence in her field." Specifically, the petitioner in that case made a significant "contribution to the TOR field," and provided substantial documentation to support such a finding, including published works and a "substantial and growing citation history."

As stated in the director's decision, "[a]s is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest." The director's decision also states that "[e]ligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought." The other decision the petitioner cites on appeal states that "[i]t does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien." The petitioner in that case demonstrated, among other things, that his published research had been widely cited and that other researchers relied on his findings to further their own research. The decision makes clear that the favorable finding was not based upon the importance of the petitioner's field of cancer research, but rather on the impact of the petitioner's own research on the field.

On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.